

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

MAILED

AUG 29 2007

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte DAVID R. PAYNE, GERALD A. STANGL,  
NORMAN E. STEVENS JR. and MICHAEL F. GARD

Application 10/617,975

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on June 12, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below.

On November 3, 2006, a PTOL-90, in the form of a Supplemental Appeal Brief was mailed in response to a Reply Brief filed on September 22, 2006.

37 CFR 41.43 states:

Examiner's response to reply brief.

(a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

(2) A supplemental examiner's answer responding to a reply brief may not include a new ground of rejection.

(b) If a supplemental examiner's answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner's answer within two months from the date of the supplemental examiner's answer.

MPEP § 1207.05 states in part..

All Supplemental Examiner's Answers are required to obtain approval of the Technology Center Director or his/her designee. Correction is required.

Also, the Examiner's Answer filed on July 25, 2006, has no indication that an appeal conference has been conducted.

See, § 1207.01 of the Manual of Patent Examining Procedure (MPEP) (8th Ed., Rev. 3, August 2005) it states:

On the examiner's answer, below the primary examiner's signature, the word "Conferees:" should be included, followed by the typed or printed names of the other two appeal conference participants. These two appeal conference participants must place their initials next to their

name. This will make the record clear that an appeal conference has been held. [Emphasis added.]

Accordingly, it is

**ORDERED** that the application is returned to the examiner

- 1) to vacate the PTOL-90 mailed November 3, 2006, to include the approval of the Technology Center Director or their Designee in accordance with 37 CFR 41.43;
- 2) for the Examiner to take corrective action regarding the appeal conference, and
- 3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: Patrick J. Nolan  
PATRICK J. NOLAN  
Deputy Chief Appeals Administrator  
(571) 272-9797

PJN/gjh

TOMLINSON & O'CONNELL, P.C.  
TWO LEADERSHIP SQUARE  
211 NORTH ROBINSON, SUITE 450  
OKLAHOMA CITY, OK 73102